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**SENATE BILL 5364**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Lovick, Valdez, Dhingra, Nobles, Pedersen, and Trudeau

AN ACT Relating to modernizing, harmonizing, and clarifying laws concerning sheriffs, chiefs, marshals, and police matrons; amending RCW 35.21.333, 35.21.334, 35.23.161, 35.27.240, 36.28.010, 36.28.025, 43.101.095, 36.28.020, 43.101.380, and 43.101.400; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.28 RCW; creating a new section; and repealing RCW 35.66.010, 35.66.020, 35.66.030, 35.66.040, 35.66.050, and 36.28.011.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that specific laws governing the eligibility requirements, duties, and responsibilities of sheriffs, police chiefs, and marshals should be updated and revised to reflect current best practices, and to ensure that local law enforcement executives, whether sheriffs, police chiefs, or marshals, whether appointed or elected, or whether partisan or nonpartisan, are subject to the same requirements and standards. By establishing such consistent requirements and standards, the legislature intends to enhance the effectiveness, professionalism, and accountability of law enforcement executives, to promote public trust and confidence in law enforcement, and to increase community safety.

Where all those who serve in law enforcement must maintain their peace officer certification, the legislature finds that state law should be clear regarding actions taken when a sheriff, police chief, or marshal has their certification revoked, to ensure that state law reflects consistent principles of strong accountability for all ranks.

The legislature finds further that specially commissioned officers and volunteers, if retained by local law enforcement executives to assist with agency needs, should be limited to roles that do not involve taking law enforcement actions, including the carrying of firearms or other weapons, the detention and arrest of others, and the use of force and deadly force, unless the person has completed peace officer training and certification requirements, and that law enforcement agencies must have policies circumscribing the permissible roles for volunteers, including search and rescue, care of animals, and chaplaincy, and limitations on use of uniforms and badges.

The legislature also intends to clarify and reinforce state law establishing that the core duty of sheriffs is to enforce the Washington state Constitution and laws, as enacted by the legislature and interpreted by the Washington supreme court, which is in alignment with the Washington supreme court's ruling in *In re Recall of Fortney*, 196 Wn.2d 766 (2021).

The legislature further finds that antiquated laws regarding "police matrons" should be repealed.

**Sec.**  RCW 35.21.333 and 2013 c 39 s 17 are each amended to read as follows:

(1) A person seeking appointment to the office of chief of police or marshal((~~, of a city or town, including a code city, with a population in excess of one thousand~~)) in any city or town, is ((~~ineligible unless~~)) eligible for appointment and for remaining in that office if that person:

(a) Is a citizen of the United States of America;

(b) Is at least 25 years old;

(c) Has obtained a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536;

((~~(c)~~)) (d) Has not been convicted under the laws of this state, another state, ((~~or~~)) the United States, or the equivalent under foreign law, of a felony;

((~~(d)~~)) (e) Has not been convicted under the laws of this state, another state, the United States, or the equivalent under foreign law of a gross misdemeanor ((~~or any crime~~)) involving moral turpitude ((~~within five years of the date of application~~)), dishonesty, fraud, or corruption;

((~~(e)~~)) (f) Has not engaged in conduct meeting the criteria requiring denial or revocation of certification set forth in RCW 43.101.105(2);

(g) Has received at least a general discharge under honorable conditions from any branch of the armed services for any military service if the person was in the military service;

((~~(f)~~)) (h) Has completed at least two years of regular, uninterrupted, full-time ((~~commissioned~~)) law enforcement agency employment involving enforcement responsibilities with a government law enforcement agency; ((~~and~~

~~(g) The person has been certified as a regular and commissioned enforcement officer through compliance with this state's basic training requirement or equivalency~~))

(i) Within 12 months of assuming office, unless otherwise extended by the criminal justice training commission, has obtained certification and maintains certification as required under chapter 43.101 RCW and the rules of the commission; and

(j) Except as provided in subsection (3) of this section, if not yet certified, has met the background investigation requirements under RCW 43.101.095, and if certified, has met the background investigation requirements that confirm that the person is eligible under this subsection.

(i) The background investigation must be completed by the appointing authority no earlier than six months prior to the date of appointment. The appointing authority must submit verification to the criminal justice training commission that the applicant meets the eligibility criteria, has complied with all applicable standards and was not determined by the background investigation and commission rules to be unsuitable for employment by a law enforcement agency or to serve in the office of chief of police or marshal. Such verification is a public record.

(ii) The appointing authority is responsible for any fees associated with the background investigation.

(2) ((~~A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population of one thousand or less, is ineligible unless that person conforms with the requirements of subsection (1) (a) through (e) of this section. A person so appointed as chief of police or marshal must successfully complete the state's basic training requirement or equivalency within nine months after such appointment, unless an extension has been granted by the criminal justice training commission.~~

~~(3)~~)) A person seeking appointment to the office of chief of police or marshal shall provide a sworn statement under penalty of perjury to the appointing authority stating that the person meets the requirements of this section.

(3) The background investigation requirements of this section do not apply to any person who is holding the office of chief of police or marshal as of the effective date of this section, unless the person seeks appointment to a different office of chief of police or marshal.

(4) For the purposes of this section, "government law enforcement agency" means a general authority Washington law enforcement agency or a limited authority Washington law enforcement agency as defined in RCW 10.93.020, or a state or federal governmental agency that is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law.

**Sec.**  RCW 35.21.334 and 1987 c 339 s 5 are each amended to read as follows:

(1) Before making an appointment ((~~in~~)) to the office of chief of police or marshal in any city or town, the appointing ((~~agency shall complete a thorough background investigation of the candidate~~)) authority must attest as part of the public record of appointment that the requirements of RCW 35.21.333 have been met. ((~~The Washington association of sheriffs and police chiefs shall develop advisory procedures which may be used by the appointing authority in completing its background investigation of candidates for the office of chief of police or marshal~~))

(2) Such appointment shall be terminated, and a vacancy created, if the chief of police's or marshal's certification is not maintained as required, if the chief of police or marshal is disqualified from serving as a law enforcement officer because of decertification under chapter 43.101 RCW, or if the other requirements of RCW 35.21.333 are determined to have not been met, or to have not been complied with while in office. The appointing city or town authority shall appoint a replacement to fill the office. The person appointed must meet the requirements of RCW 35.21.333.

**Sec.**  RCW 35.23.161 and 1994 c 81 s 40 are each amended to read as follows:

The department of police in a city of the second class shall be under the direction and control of the chief of police subject to the direction of the mayor. The city and chief must comply with the requirements set forth in RCW 35.21.333 and 35.21.334. Any police officer may pursue and arrest violators of city ordinances beyond the city limits.

((~~Every citizen shall lend the police chief aid, when required, for the arrest of offenders and maintenance of public order. With the concurrence of the mayor, the police chief may appoint additional police officers to serve for one day only under orders of the chief in the preservation of public order.~~)) The department must comply with the requirements set forth in section 6 of this act regarding use of volunteers and specially commissioned officers.

The police chief shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or the public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

The police chief shall perform such other services as may be required by statute or ordinances of the city.

**Sec.**  RCW 35.27.240 and 2007 c 218 s 67 are each amended to read as follows:

The department of police in a town shall be under the direction and control of the marshal subject to the direction of the mayor. The town and marshal must comply with the requirements set forth in RCW 35.21.333 and 35.21.334. He or she may pursue and arrest violators of town ordinances beyond the town limits.

The marshal's lawful orders shall be promptly executed by deputies((~~,~~)) and police officers ((~~and watchpersons. Every citizen shall lend him or her aid, when required, for the arrest of offenders and maintenance of public order~~)). He or she may appoint, subject to the approval of the mayor, one or more deputies, for whose acts he and his or her bondspersons shall be responsible, whose compensation shall be fixed by the council. ((~~With the concurrence of the mayor, the marshal may appoint additional police officers for one day only when necessary for the preservation of public order~~)) The department must comply with the requirements set forth in section 6 of this act regarding use of volunteers and specially commissioned officers.

The marshal shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

The marshal shall execute and return all process issued and directed to him or her by any legal authority and for his or her services shall receive the same fees as are paid to constables. The marshal shall perform such other services as the council by ordinance may require.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1) If a law enforcement agency in any city or town uses volunteers or specially commissioned officers to assist in the work of their agency, the roles of volunteers and specially commissioned officers, other than those who serve as reserve officers as defined in RCW 10.93.020, shall be limited to functions and actions not involving use of law enforcement authority or carrying of or use of firearms or other weapons, unless the volunteer or specially commissioned officer is certified under chapter 43.101 RCW.

(2) Limitations on authority and the required supervision of volunteers and specially commissioned officers must be set forth in that agency's policies and regulations. Agency policies and regulations shall also include requirements that volunteers and specially commissioned officers must be clearly identifiable by the public as distinguishable from peace officers, and that if they are provided badges or other identifying insignia, such identification shall be officially issued by the agency and used only while on duty in this role.

**Sec.**  RCW 36.28.010 and 2009 c 549 s 4050 are each amended to read as follows:

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of ((~~his or her~~)) the office, ((~~he or she and his or her~~)) the sheriff and the sheriff's deputies:

(1) Shall enforce the Constitution and laws of the United States and the Constitution and laws of the state of Washington, as interpreted and applied by the state supreme court;

(2) Shall be authorized to make complaint of all violations of the criminal law, which shall come to their knowledge, and arrest and commit to ((~~prison~~)) jail all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

((~~(2)~~)) (3) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;

((~~(3)~~)) (4) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;

((~~(4)~~)) (5) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;

((~~(5)~~)) (6) Shall attend, when appropriate, the sessions of the courts of record held within the county, and obey ((~~their~~)) lawful judicial orders or directions;

((~~(6)~~)) (7) Shall keep and preserve the peace in their respective counties, and are authorized to work in collaboration with other law enforcement agencies to help quiet and suppress all affrays, riots, unlawful assemblies and insurrections, ((~~for which purpose, and for~~)) effect the service of process in civil or criminal cases, and ((~~in apprehending or securing~~)) apprehend and secure any person for felony or breach of the peace((~~, they may~~));

(8)(a) May call to their aid ((~~such persons, or power of their county as they may deem necessary~~)) volunteers or specially commissioned officers. The roles of volunteers and specially commissioned officers, other than those who serve as reserve officers as defined in RCW 10.93.020, shall be limited to functions and actions not involving use of law enforcement authority or carrying of or use of firearms or other weapons, unless the volunteer or specially commissioned officer is certified under chapter 43.101 RCW.

(b) Limitations on authority and the required supervision of volunteers and specially commissioned officers must be set forth in that agency's policies and regulations. Agency policies and regulations shall also include requirements that volunteers and specially commissioned officers must be clearly identifiable by the public as distinguishable from peace officers, and if they are provided badges or other identifying insignia, such identification shall be officially issued by the agency and used only while on duty in this role.

**Sec.**  RCW 36.28.025 and 1979 ex.s. c 153 s 6 are each amended to read as follows:

((~~A person who files a declaration of candidacy for the office of sheriff after September 1, 1979, shall have, within twelve months of assuming office, a certificate of completion of a basic law enforcement training program which complies with standards adopted by the criminal justice training commission pursuant to RCW 43.101.080 and 43.101.160.~~

~~This requirement does not apply to persons holding the office of sheriff in any county on September 1, 1979~~)) (1) A person filing for candidacy for the office of sheriff, or seeking appointment to the office of sheriff, is eligible for holding or remaining in that office if that person:

(a) Is a citizen of the United States of America;

(b) Is at least 25 years old;

(c) Has obtained a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536;

(d) Has not been convicted under the laws of this state, another state, United States law, or foreign law, of a felony;

(e) Has not been convicted under the laws of this state, another state, the United States, or foreign law, of a gross misdemeanor involving moral turpitude, dishonesty, fraud, or corruption;

(f) Has not engaged in conduct meeting the criteria requiring denial or revocation of certification set forth in RCW 43.101.105(2);

(g) Has received at least a general discharge under honorable conditions from any branch of the armed services for any military service if the person was in the military service;

(h) Has completed at least two years of regular, uninterrupted, full-time law enforcement agency employment involving enforcement responsibilities with a government law enforcement agency;

(i) Within 12 months of assuming office, unless otherwise extended by the criminal justice training commission, has obtained certification and maintains certification as required under chapter 43.101 RCW and the rules of the commission; and

(j) Except as provided in subsection (4) of this section, if not yet certified, has met the background investigation requirements under RCW 43.101.095. If certified, has completed a background investigation that confirms that the person is eligible under this section.

(i) If a person is filing for candidacy for the office of sheriff, the Washington state patrol must conduct the background investigation and submit the completed background investigation to the criminal justice training commission for verification that it complies with the requirements of this section at least 45 days before the deadline for filing for election. If the commission determines additional background information must be gathered to fulfill the statutory requirements, the commission shall request the state patrol conduct the necessary additional investigation and the state patrol shall resubmit the completed investigation to the commission for verification. Once the commission completes its verification that the background investigation requirements have or have not been met, the commission shall notify the state patrol and the candidate. The commission shall also at the same time post on their public website maintained under RCW 43.101.400(4) a list of all candidates for sheriff who have passed the required background investigation so that the public and election officials may readily ascertain whether any candidate filing for office has not met the required eligibility criteria and is thus not eligible to be on the ballot.

(ii) The person filing for candidacy must submit a background investigation request to the Washington state patrol at least three months before the deadline to file for election so that there is sufficient time for the state patrol and the criminal justice training commission to conduct the investigation and verification process.

(iii) In the case of appointment, the background investigation must be completed by the appointing authority no earlier than six months prior to the date of appointment. The appointing authority must submit verification to the criminal justice training commission that the applicant meets the eligibility criteria, has complied with all applicable standards and was not determined by the background investigation and commission rules to be unsuitable for employment by a law enforcement agency or to serve in the office of chief of police or marshal. Such verification is a public record.

(iv) The Washington state patrol is responsible for any fees associated with the background investigation for any person seeking election to the office of sheriff. The appointing authority is responsible for any fees associated with the background investigation for any person being appointed to the office of sheriff.

(2) A person seeking election or appointment to the office of sheriff must provide a sworn statement under penalty of perjury to the state patrol or to the appointing authority stating that the person meets the requirements of this section, and the state patrol or appointing authority must attest as part of the public record that the requirements of this section have been met.

(3) For the purposes of this section, "government law enforcement agency" means a general authority Washington law enforcement agency or a limited authority Washington law enforcement agency as defined in RCW 10.93.020, or a state or federal governmental agency that is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law.

(4) The background investigation requirements of this section do not apply to any person who is holding the office of sheriff as of the effective date of this section, unless the person seeks election or appointment to a different office of sheriff.

NEW SECTION. **Sec.**  A new section is added to chapter 36.28 RCW to read as follows:

(1) In addition to the causes for vacancy of elective office set forth in RCW 42.12.010, a vacancy in the office of sheriff is created if the incumbent does not maintain certification as required under chapter 43.101 RCW, is disqualified from serving as a law enforcement officer because of decertification under chapter 43.101 RCW, or if the other requirements of RCW 36.28.025 are determined to have not been met or to have been violated while in office. When a vacancy has been created, if it is a partisan elective office, the county legislative authority of that county shall appoint a replacement to fill the office. If it is a nonpartisan elective office, the county executive or the county legislative authority of that county shall appoint a replacement to fill the office. The person appointed must meet the requirements of RCW 36.28.025.

(2) Where the office of sheriff is an appointed position, such appointment is terminated, and a vacancy created, if the incumbent does not maintain certification as required under chapter 43.101 RCW, is disqualified from serving as a law enforcement officer because of decertification under chapter 43.101 RCW, or if the other requirements of RCW 36.28.025 are determined to have not been met or to have not been complied with while in office. The appointing county authority shall appoint a replacement to fill the office. The person appointed must meet the requirements of RCW 36.28.025.

**Sec.**  RCW 43.101.095 and 2024 c 330 s 10 are each amended to read as follows:

(1)(a) As a condition of employment, election, or appointment to office, all ((~~Washington~~)) peace officers and all corrections officers are required to obtain certification ((~~as a peace officer or corrections officer or exemption therefrom~~)) and maintain certification as required by this chapter and the rules of the commission.

(b) To ensure that sheriffs, chiefs, and marshals meet the requirements in RCW 35.21.333 and 36.28.025 to obtain certification within 12 months of assuming office, the commission must prioritize their access to any commission training required for certification.

(2)(a) Any applicant ((~~who has been offered a conditional offer of employment~~)) seeking election, appointment, or employment as a peace officer ((~~or~~)), reserve officer, ((~~offered a conditional offer of employment as a~~)) corrections officer ((~~after July 1, 2021~~)), or ((~~offered a conditional offer of employment~~)) as a limited authority Washington peace officer who if hired would qualify as a peace officer as defined by RCW 43.101.010 ((~~after July 1, 2023~~)), must submit to a background investigation to determine the applicant's suitability for employment. This requirement ((~~applies~~)) does not apply to any person whose certification has lapsed as a result of a break of more than 24 consecutive months in the officer's service ((~~for a reason other than~~)) as a result of being recalled into military service. Employing agencies and appointing authorities may only make a conditional offer of employment pending completion of the background ((~~check~~)) investigation and shall ((~~verify~~)) attest in writing to the commission that they have complied with all background ((~~check~~)) investigation requirements prior to making any nonconditional offer of employment.

(b) The background ((~~check~~)) investigation must have been completed within the prior six months, and include:

(i) A check of criminal history, any national decertification index, commission records, and all disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct and the reason for separation from employment. Law enforcement or correctional agencies that previously employed or received an application from the applicant shall retain application records and disclose employment or application information within 30 days of receiving a written request from the employing agency conducting the background investigation, including the reason for the officer's separation from the agency, any information regarding the candidate's application to that agency, and any other information obtained during the background investigation conducted as part of the application process. Complaints or investigations of misconduct must be disclosed regardless of the result of the investigation or whether the complaint was unfounded;

(ii) Inquiry to the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any potential impeachment disclosure list;

(iii) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined by the commission;

(iv) A review of the applicant's social media accounts;

(v) Verification of immigrant or citizenship status as either a citizen of the United States of America, lawful permanent resident, or deferred action for childhood arrivals recipient;

(vi) A psychological examination administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission;

(vii) A polygraph or similar assessment administered by an experienced professional with appropriate training and in compliance with standards established in rules of the commission; and

(viii) Except as otherwise provided in this section, any test or assessment to be administered as part of the background investigation shall be administered in compliance with standards established in rules of the commission.

(c) The commission may establish standards for the background ((~~check~~)) investigation requirements in this section and any other preemployment background ((~~check~~)) investigation requirement that may be imposed by an employing agency or the commission.

((~~(d) The employing law enforcement agency may require that each person who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or $400, whichever is less. Employing agencies may establish a payment plan if they determine that the person does not readily have the means to pay the testing fee.~~))

(3)(a) The commission shall allow a peace officer or corrections officer to retain status as a certified ((~~peace officer or corrections~~)) officer as long as the officer: (i) Timely meets the basic training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (ii) timely meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (iii) is not denied certification by the commission under this chapter; and (iv) has not had certification suspended or revoked by the commission.

(b) The commission shall certify peace officers who are limited authority Washington peace officers employed on or before July 1, 2023. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) As a condition of certification and of a background investigation, a peace officer or corrections officer must((~~, on~~)):

(a) On a form devised or adopted by the commission, authorize the release to the employing county, city, or agency and to the commission of the officer's personnel files, including disciplinary, termination, civil or criminal investigation, or other records or information that are directly related to a certification matter or decertification matter before the commission((~~. The peace officer or corrections officer must also consent~~));

(b) Consent to and facilitate a review of the officer's social media accounts, however, consistent with RCW 49.44.200, the officer is not required to provide login information. The release of information may not be delayed, limited, or precluded by any agreement or contract between the officer, or the officer's union, and the entity responsible for the records or information; and

(c) Indicate, on a form provided by the hiring agency, any prior application materials, including any background investigation conducted while seeking employment with any other law enforcement agency, including where the applicant began but did not complete a full background investigation.

(5) The employing county, city, or agency and commission are authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment or certification under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(6) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

(7) Prior to certification, or to appointment as a sheriff, chief, or marshal, the employing agency shall ((~~certify~~)) attest to the commission that the agency has received or conducted a completed ((~~the~~)) background ((~~check~~)) investigation, no information has been found that would disqualify the applicant from certification, ((~~and~~)) that the applicant ((~~is~~)) was determined by the background investigation and under commission rules to be suitable for election or employment as a peace officer ((~~or~~)), corrections officer, sheriff, chief, or marshal. For candidates for the elective office of sheriff, the person filing for office must, by the deadline to file as a candidate, have completed the background investigation required by chapter 36.28 RCW.

(8) All files, papers, and other information obtained as part of the background investigation are confidential and exempt from public disclosure under chapter 42.56 RCW. The verification by the commission that the background investigation has been completed and passed is a public record. The commission must retain the background investigation files.

(9)(a) In order to assure consistent use of best practices regarding the standards for determining whether a background investigation has identified information that should disqualify an applicant, the commission shall, by June 30, 2026, adopt by rule criteria to be applied by employing counties, cities, agencies, and the commission in determining whether an applicant is suitable for employment pursuant to this section.

(b) To assist in developing these rules regarding disqualifying criteria, the commission shall seek input from individuals who have experience in conducting or reviewing law enforcement background investigations, misconduct or human resource complaints, investigations, or disciplinary decisions, or who provide community perspective, which may include:

(i) Chiefs, sheriffs, law enforcement agency human resource staff, legal counsel, or others from law enforcement agencies or city, county, or state human resources departments;

(ii) Individuals who serve as or have served as polygraph examiners or psychologists for law enforcement background investigations;

(iii) Individuals who serve in or have served in law enforcement accountability oversight roles;

(iv) Representatives from the Washington association of sheriffs and police chiefs, the Washington state patrol, the Washington fraternal order of police, the Washington council of police and sheriffs, and a union representing the interests of peace officers and corrections officers; and

(v) Community representatives, including a community member from Eastern Washington.

(c) The rules shall include criteria that must result in mandatory disqualification, which must include all grounds for the denial or revocation of an officer's certification under RCW 43.101.105(2), and criteria that may result in disqualification, which must include all grounds for the denial, suspension, or revocation of an officer's certification under RCW 43.101.105(3), with factors to be considered by the agency or by the commission in making that discretionary determination.

(10) As used in this section, "applicant" includes a person applying to serve as a new officer, a lateral transfer within the state or from another state from a law enforcement or corrections agency to a different law enforcement or corrections agency, or an officer moving from a corrections division to a law enforcement division or vice versa within the same agency unless exempted by the commission, or a person seeking appointment or election as a sheriff, chief, or marshal.

**Sec.**  RCW 36.28.020 and 2009 c 549 s 4051 are each amended to read as follows:

Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct. The use of such persons shall be limited to functions and actions not involving use of law enforcement authority or carrying of firearms or other weapons unless such persons are certified under chapter 43.101 RCW.

**Sec.**  RCW 43.101.380 and 2021 c 323 s 20 are each amended to read as follows:

(1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is a preponderance of the evidence.

(2) In all hearings requested under RCW 43.101.155, an administrative law judge appointed under chapter 34.12 RCW shall be the presiding officer, shall make all necessary rulings in the course of the hearing, and shall issue a proposed recommendation, but is not entitled to vote. In addition, a five-member hearings panel shall hear the case and make the commission's final administrative decision.

(3) The commission shall appoint a panel to hear certification actions as follows:

(a) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel: (i) One police chief or sheriff from an agency not a current or past employer of the peace officer; (ii) one certified Washington peace officer who is at or below the level of first line supervisor and who has at least ten years' experience as a peace officer; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

(b) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel: (i) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility; (ii) one corrections officer who is at or below the level of first line supervisor and who has at least ten years' experience as a corrections officer; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

(c) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel (i) one tribal police chief; (ii) one tribal police officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

(d) Persons appointed to hearings panels by the commission shall, in relation to any certification action on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular commission members.

(4) In decertification matters where there was a due process hearing or a disciplinary appeals hearing following an investigation by a law enforcement agency, or a criminal hearing regarding the alleged misconduct, the hearings panel need not redetermine the underlying facts but may make its determination based solely on review of the records and decision relating to those proceedings and any investigative or summary materials from the administrative law judge, legal counsel, and commission staff. However, the hearings panel may, in its discretion, consider additional evidence to determine whether misconduct occurred. The hearings panel shall, upon written request by the subject peace officer or corrections officer, allow the peace officer or corrections officer to present additional evidence of extenuating circumstances.

(5) The commission is authorized to proceed regardless of whether an arbitrator or other appellate decision maker overturns the discipline imposed by the officer's employing agency or whether the agency settles an appeal. No action or failure to act by a law enforcement agency or corrections agency or decision resulting from an appeal of that action precludes action by the commission to suspend or revoke an officer's certificate, to place on probation, or to require remedial training for the officer.

(6) The hearings, but not the deliberations of the hearings panel, are open to the public. The transcripts, admitted evidence, and written decisions of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure, and are subject to subpoena and discovery proceedings in civil actions.

(7) Summary records of hearing dispositions, revocations obtained via default or surrender, certification denials, and all cases that were resolved with disciplinary action, must be made available on an annual basis on a public website.

(8) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598.

**Sec.**  RCW 43.101.400 and 2021 c 323 s 21 are each amended to read as follows:

(1) Except as provided under subsection (2) of this section, all files, papers, and other information obtained by the commission as part of ((~~an initial~~)) a background investigation pursuant to RCW 43.101.095 ((~~(2) and (4)~~)), 36.28.025, and 35.21.333 are confidential and exempt from public disclosure. Such records are not subject to public disclosure, subpoena, or discovery proceedings in any civil action, except as provided in RCW 43.101.380(6) or which become part of the record in a suspension or decertification ((~~matter~~)) hearing.

(2) Records which are otherwise confidential and exempt from public disclosure under subsection (1) of this section may be reviewed and copied: (a) By the officer involved or the officer's counsel or authorized representative, who may review the officer's file after the officer has been served with a statement of charges pursuant to RCW 43.101.155, and may submit any additional exculpatory or explanatory evidence, statements, or other information, any of which must be included in the file; (b) by a duly authorized representative of (i) the agency of termination, or (ii) a current employing law enforcement or corrections agency, which may review and copy its employee-officer's file; or (c) by a representative of or investigator for the commission.

(3) Records which are otherwise confidential and exempt from public disclosure under subsection (1) of this section may also be inspected at the offices of the commission by a duly authorized representative of a law enforcement or corrections agency considering an application for employment by a person who is the subject of a record. A copy of records which are otherwise confidential and exempt under subsection (1) of this section may later be obtained by an agency after it hires the applicant. In all other cases under this subsection, the agency may not obtain a copy of the record.

(4) The commission shall maintain a database that is publicly searchable, machine readable, and exportable, and accompanied by a complete, plain-language data dictionary describing the names of officers and employing agencies, all conduct investigated, certifications denied, notices and accompanying information provided by law enforcement or correctional agencies, including the reasons for separation from the agency, decertification or suspension actions pursued, and final disposition and the reasons therefor for at least 30 years after final disposition of each incident. The dates for each material step of the process must be included. Any decertification must be reported to the national decertification index.

(5) Every individual, legal entity, and agency of federal, state, or local government is immune from civil liability, whether direct or derivative, for providing information to the commission in good faith.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 35.66.010 (Authority to establish) and 1965 c 7 s 35.66.010;

(2) RCW 35.66.020 (Appointment) and 1965 c 7 s 35.66.020;

(3) RCW 35.66.030 (Assistance by police) and 1965 c 7 s 35.66.030;

(4) RCW 35.66.040 (Compensation) and 2007 c 218 s 68 & 1965 c 7 s 35.66.040;

(5) RCW 35.66.050 (Persons under arrest—Separate quarters) and 1973 1st ex.s. c 154 s 53 & 1965 c 7 s 35.66.050; and

(6) RCW 36.28.011 (Duty to make complaint) and 1963 c 4 s 36.28.011.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**